

**MINUTES OF THE CITY PLANNING COMMISSION
J. MARTIN GRIESEL ROOM**

November 5, 2004

9:00 A.M.

PRESENT: *Appointed Members:*

Don Mooney, Caleb Faux, Jim Tarbell, Jacqueline McCray and Valerie Lemmie

Community Development and Planning Staff:

Margaret Wuerstle, Virginia Vornhagen, Steve Briggs, Caroline Kellam, Felix Bere, Katherine Keough-Jurs and Jen Walke

Law Department:

Julia Carney

CALL TO ORDER

Mr. Mooney called the meeting to order.

MINUTES

The minutes of the October 15, 2004 meeting were presented.

Motion: Mr. Faux moved approval

Second: Ms. McCray

Vote: All ayes (5-0), motion carries.

CONSENT ITEMS

ITEM #1 – A request for the zoning designation on the property located on Beekman Street between Carll and Denham Streets (1600 Carll – 2745 Beekman Street) to be returned to B-3. The zoning district was changed during the code re-write project and is requested by the North Fairmount Community Center.

ITEM #1A – A request for the zoning designation on the property located on Ninann Ct. to the north, Guenther Ave. (a paper street) on the east, and Yoast Ave. running through the alley between two wooded ridges to be changed from SF-2 to R-3. The zoning district was changed during the code re-write project and is requested by the North Fairmount Community Center.

ITEM #2 – A report and recommendation on the sale of Crippen Alley in the Central Business District to the American Red Cross.

ITEM #3 – A report and recommendation on a Plat of Subdivision, Record Plat, for the Villages of Daybreak Subdivision, Phase One – Block A, located south of Seymour Avenue, east of Rhode Island Avenue and north of Langdon Farm Road in the neighborhood of Bond Hill.

ITEM #4 – A report and recommendation for the sale of Classen Street, west of Dennis Street to the State of Ohio for the use and benefit of the University of Cincinnati, which real property is no longer needed for any municipal purpose.

ITEM #5 – **WITHDRAWN** (at the request of the Law Department) -- Authorization of the sale of surplus City-owned land located at 8501 Wilton Street and repealing Ordinance No. 260-2002.

Motion: Ms. McCray moved approval of Items 1-4
Second: Mr. Faux
Vote: All ayes (5-0), motion carries.

DISCUSSION ITEMS

ITEM #8 – A report and recommendation on a zone change request for property at 5848 Winton Ridge Lane in Winton Hills.

Mr. Mooney said that he had received a request to have Item #8 continued so that the legal counsel for the applicant of the zone change could have more time to prepare. Mr. Mooney suggested that unless there was an objection the Planning Commission would continue this item until the Planning Commission meeting of November 19, 2004. There were no objections from the audience or from the Commissioners. This item was held until the November 19th meeting.

ITEM #7 – A report and recommendation on an application for a beverage drive through/grocery store on an existing vacant lot at 6549 Montgomery Road within Interim Development Control (IDC) District #75 in the community of Kennedy Heights.

Mr. Mooney asked Ms. Wuerstle if all concerned parties had been informed of the postponement of this item. Ms. Wuerstle responded that she had been in contact with the attorney for the applicant. However, Ms. Wuerstle said it would be necessary to accept the report and then establish the hearing date as November 19, 2004.

Motion: Mr. Faux moved approval to accept the report and establish a hearing date for November 19, 2004.
Second: Ms. McCray
Vote: All ayes (5-0), motion carries.

ITEM #6 – A report and recommendation on a zone change request for property at 4112 Clifton Avenue in the community of Clifton.

Mr. Felix Bere, staff planner, presented this item on 4112 Clifton Avenue. As part of the zone change study, a staff conference had been held on October 28, 2004 to discuss the requested change back to a zoning district equivalent to an R-4. The current zoning of SF-20 was instituted by the February 2004 zoning update. The applicant requested that it be changed back to RM2.0, which is the equivalent of R-4 multi-family. Mr. Bere reported that the vast majority of property owners in attendance were opposed to the change from the SF-20 designation. Mr. Bere said that the major community objection was that development into or close to the hillside would surely cause damage (i.e. mudslides) to the surrounding property. The increase in traffic would also contribute to an already bad traffic problem. The community also indicated that they were against any multi-family rental property abutting their property.

Mr. Bere said that after the staff conference, Mr. Winkler had made a counter offer of an amendment to his original request. Mr. Bere informed the Planning Commission that Mr. Winkler had been seeking a re-zoning from SF-20 to RM-2.0, but now he would change from SF-20 to SF-6. SF-6 would allow development for four single-family units attached. The originally requested RM-2.0 designation would allow for up to 10 units on this property. Mr. Bere indicated that Mr. Winkler had felt this compromise was necessary because of the negative reaction from the community during the staff conference.

Mr. Bere asked the Planning Commission to reference his staff report on page 3, under conclusions, which states "petitioner's modified proposal to construct four single-family attached dwellings" instead of a multi-family medium density development for up to 10 units has support of staff and the community as revealed at the conference and correspondence". Mr. Bere noted that the community referenced was the Clifton Town Meeting, and the community was agreeable with three units, not four. Four units would be in agreement with the Clifton Community Plan. Therefore, the re-zoning from SF-20 to SF-6 to allow for four units would be consistent with the Community Plan.

Mr. Mooney asked for clarification on whether each vacant property on both sides of Clifton Avenue, was under a PUD. Mr. Bere indicated only one side of the street was designated as a PUD area which would allow for 22 units, as indicated on the map included in staff report. Mr. Winkler's property on the other side of the street was not designated PUD.

Mr. Mooney then asked what the development could be if left at SF-20. Mr. Bere stated that the SF-20 would allow only one unit per 20,000 sq. ft. of lot area.

Mr. Winkler then came forward to describe his plan. He had envisioned constructing 10 units. After feedback from the community, Mr. Winkler submitted an amendment and asked for a re-zoning from SF-20 to SF-6, which would allow for the development of four single-family attached dwellings of about 1,200 sq. ft. each. Mr. Winkler indicated he planned to live in one of the dwellings and set up the other three as rentals. Mr. Winkler told the Planning Commission that he had made this modification due to the hillside issues presented. Mr. Winkler said he would build on the flat land surface to prevent hillside erosion problems. This reduction in the number of dwellings would be in line with a rezoning from SF-20 to SF-6.

Mr. Winkler told the Planning Commission that he felt the four-unit attached family structure would be a good fit and an amenable compromise with the community's request. However, while waiting to speak today he had taken a few minutes to review some of the letters attached to the staff report, which included requests for denial of the zone change. After his review of the input from the community he began to feel there may be underlying reasons to turn down any building that included rental units. While taking some time to review letters attached to the staff report, Mr. Winkler said he noted a number of references to items that were incorrect and had nothing to do with his proposal. He questioned the validity of someone being against his plan when their references were incorrect.

Mr. Winkler said in the past he had been told that the hillside had been stabilized for \$250,000 and he is curious as to who worked on stabilizing the hillside. Mr. Winkler told the Planning Commission that they could check his background in the building industry here in the City. He understands hillsides and knows how to deal with potential problems when building close to them. Mr. Winkler also said he does not automatically tear down trees, thus destroying positive environmental factors, etc.

Mr. Winkler told the Planning Commission that he had made quite a number of contacts with City staff when he was purchasing the property regarding the acceptability of his construction proposal. Not one of the City contacts indicated any problems nor had anyone indicated that the zoning would be changing.

Mr. Winkler questioned why the community was against rental property being in this area. He felt if the community considers this area to be a "gateway" for Clifton, perhaps they should consider buying it. As for the increase in the traffic flow issue, there would only be one entrance, which could not cause a tremendous increase in traffic for the area.

Mr. Briggs, senior staff planner, had been called to give some background on the property across the street. Steve Briggs said that the property now had a PUD in place. Mr. Mooney then asked if a PUD had some type of expiration date. Mr. Briggs responded that the PUD had a two-year limitation. Mr. Mooney asked

for verification that the amount of time left would be about a year and a half, to which Mr. Briggs responded in the affirmative. Mr. Briggs said that he had not heard recently from the developer and therefore was unsure if this project would be moving forward.

Mr. Mooney noted that if the property were to stay zoned as SF-20 it would allow for only one unit versus the four Mr. Winkler has proposed. Mr. Tarbell questioned the surrounding property especially the roofing company Zero Breeze (noted as north of Interstate 75 on the map attachment). Ms. McCray indicated the other boundaries included the interstate and the Mill Creek and a recycle business. Mr. Faux pointed out that with the boundaries as outlined, the property would not be suitable for a large and expensive family home and buyer.

Mr. Eric Russo, representing the Hillside Trust, said that at this point the Trust group is not against the rezoning of the property at 4112 Clifton Ave. below Clifton Ridge Terrace. However, the area is known for landslide problems. Building multi-family density structures on the property could exacerbate the issues up the hill. At a more appropriate time and when they can see the proposed development plan, their group may indicate opposition. If Mr. Winkler does present plans beyond a 4-unit density, the Hillside Trust may, at that future time indicate its dislike of the presented development because of the problems it might create.

At an earlier time the property across the street was designated for 22 units, but Mr. Russo said the Hillside Trust immediately opposed that proposed plan because of lakebed clay issues. Mr. Russo said the PUD was set in place by an EQ through the Hearing Examiner, just before the February 2004 re-zoning become effective. Mr. Russo stated that Clifton residents also opposed the PUD on this property. The Hillside Trust, Mr. Russo stated, recommended that the Hearing Examiner consider it under the new zoning code and disallow the 22 units. Mr. Bob Richardson was the Hearing Examiner for this item.

Ms. McCray responded to Mr. Russo's mentioning that another property on another nearby open site could be a good area for a large home. She said that there was a vast difference between the two properties in the location surroundings. The subject property on Clifton is a transition location and the development proposed is proper for it.

Ms. Becky Husseinzadeh of Clifton Ridge Drive noted that the hillside problem was proven a few years ago when there were a number of heavy rainstorms, which had caused a problem with sliding. The problem was so pronounced that it took several years for the abutting properties to get back their property values. Ms. Husseinzadeh felt that the green space close to the homes surrounding hers is a vital barrier to the noise and pollution of the surrounding interstate, trains and corporations.

Ms. Husseinzadeh has been a homeowner on 4031 Clifton Ridge since 1989. She said she was president of the Clifton Ridge Homeowners Association. Since the purchase of her home, Kennard Avenue had been constructed and the traffic has become untenable. Ms. Husseinzadeh said she felt the extra street for this development would cause even more problems with traffic. Ms. Husseinzadeh also said she would like to see the property kept as a green space.

Ms. Anna VanMatre, property owner of 4051 Clifton Ridge, felt as the other representatives of the community did. Ms. VanMatre wanted to keep a green space between the railroad tracks, the Zero Breeze property and not to jeopardize the hillside.

Mr. Faux then said that with the restrictions Ms. VanMatre pointed out, he felt there was no likelihood of a large home being built on that 20,000 sq. ft. property and drawing a buyer. Mr. Faux noted that Ms. VanMatre points supported Mr. Winkler's proposal. Mr. Faux also noted that Ms. VanMatre's point of view supported his feelings that if the land were not used in the manner Mr. Winkler had presented then it would have no value, even to Mr. Winkler. Mr. Faux felt that the community members and community council should get together with the property owner/developer and try to create a solution agreeable to both.

Ms. Lemmie agreed with Mr. Faux in that Mr. Winkler had already made a concession from trying to build 10 units and is now down to four units.

Mr. Mooney questioned staff on the use of SF-10 for this property. Ms. Wuerstle said that SF-10 would not allow for attached buildings, but that SF-6 does allow for the clustering of units.

Mr. Patrick Borders representing Clifton Town Meeting said that this group had voted against the RM-2.0 and the change to the proposed SF-6. The Clifton Town Meeting is in favor of the SF-20 in Clifton especially north of McAlpin.

Again Mr. Mooney indicated the need for the community and the property owner/developer to get together to talk and come to an agreement on what to build because this piece of property would definitely not be good for a high value development. Per Ms. Carney of the Law Department, the property could be zoned as PD and then authorize a specific development plan that would satisfy both the developer and the community.

Mr. Faux reiterated his perspective that the community, including Clifton Town Meeting, were being unreasonable to restrict this property owner from making a profitable improvement to his property. Mr. Faux said that the surrounding community property owners should get together with Mr. Winkler and try to make some compromise. Otherwise, Mr. Faux said, the property owner should be allowed to proceed as he wishes since his proposal seems to be in line with the surrounding properties, yet preserving the hillside as the neighbors have already requested.

Mr. Tarbell then suggested that if the abutting property owners could not come to an agreement with Mr. Winkler, the property owners might buy the property from Mr. Winkler.

Motion: Mr. Faux moved to table this item for one month to the first meeting in December.
Second: Ms. Lemmie
Vote: All ayes (5-0), motion carries.

Mr. Mooney left the meeting at 10:15 a.m. and requested Ms. McCray to be chair pro-tem.

ITEM #9 -- Zoning Code Text Changes:

*Sections held from previous meetings:

- *§ 1401-01 Public Nuisance – New Definition
- *§ 1405-05 Use Regulations – Residential Multi-family Districts – L7 Condition
- *§ 1409-29 Outdoor Retail Sales - Location of Sales Area
- *§ 1421-33 Fences and Walls - Maximum Height
- *§ 1425-03 Requirements for Off-Street Parking and Loading - Modification

Sections held from the October 15, 2004 meeting (yet to be considered):

- § 1425-27 Parking Lot Screening – Modification
- § 1425-37 Surfacing, Drainage & Grade of Parking and Loading Facilities - Modification
- § 1427-03-N1 Nonconforming Sign – Modification
- § 1427-45 Maintenance, Abandonment and Removal – Of signs

Ms. McCray then requested to proceed with the Zoning Text Changes that had yet to be discussed.

Mr. Kraus, attorney, requested to move to the **Public Nuisance Section 1401-01** within the zoning changes. He had prepared a written definition for "Public Nuisance" and distributed copies of the definition to the Planning Commissioners. Mr. Kraus asked to receive any comments from the Planning Commission and staff.

Ms. Wuerstle, Chief Planner, responded that although the Public Nuisance item was listed we had not yet received a definition from the Law Department. Ms. Julia Carney of the Law Department said that Ms. Dotty Carman was still doing research on the definition. Ms. Carney suggested discussion would be more appropriate for the next Planning Commission meeting. Mr. Kraus agreed to this.

Review of both **Section 1425-27, Parking Lot Screening**, along with **Section 1421-33, Fences and Walls** (an associated item), were presented by Mr. Skip Forwood, Urban Conservator. Mr. Forwood had previously discussed these with Dotty Carman from the Law Department and had come to an agreement that on Fences and Walls 14-21-33b. In any front or corner, side yard, the maximum height of the fence or wall could not exceed 4 feet". Right now, Mr. Forwood explained that the regulation regarding an opaque wall or fence, whereas the wall and fence section indicates those facing on the streets had to be no more than 50% opaque. Mr. Forwood then suggested exempting the Fences and Walls from that requirement if they are used as parking lot screening.

Ms. McCray asked for an assurance that the Law Department agreed with Mr. Forwood on this change.

Motion: Ms. Lemmie moved not to approve the 1425-27, but to approve the new language for 1421-33 Fences and Walls.
Second: Mr. Faux
Vote: All ayes (4-0), motion carries.

Mr. Carl Uebelacker of 2851 Victoria Avenue then requested that the Commission resolve the **Public Nuisance** item soon because not only in his neighborhood of Hyde Park, but other neighborhood representatives had contacted him with regard to a quick resolution of the definition.

Mr. Uebelacker then requested discussion on **Item 1427-03-N1 – Non-Conforming Signs**. He said that the wording now permits signs to be grandfathered in under the wording "alteration and expansions" forever. Ms. Wuerstle agreed with Mr. Uebelacker's understanding that non-conforming structures are grandfathered in until the owner removes it or if it is destroyed by more than 50%. The replacement would need to come into conformance with the existing code regulations.

Mr. Uebelacker said he could mention one particular sign in his neighborhood that has been altered on one side, then the other side and eventually in the center and it now bears no resemblance to the original sign, yet it is still within compliance because of the "alteration and expansions" wording and grandfathering. Mr. Uebelacker felt the words "alteration and expansions" should be removed from the current and prior code. Mr. Uebelacker suggested the Planning Commission review his written submittal of August 27 page 5 which had been previously presented.

Ms. Lemmie then instructed staff to review Mr. Uebelacker's written comments and then present the appropriate wording for a future vote.

Motion: Ms. Lemmie moved approval.
Second: Mr. Faux
Vote: All ayes (4-0), motion carries.

Mr. Uebelacker then suggested that in regard to other Zoning Text Changes, the process should be grouped by type, such as: typographical errors, then those items that have a great significance. There was general agreement from the Planning Commission and staff on Mr. Uebelacker's point on presentation and grouping of text items.

Section 1427-45 Maintenance, Abandonment and Removal. Ms. Wuerstle explained that instead of stating all signs must be maintained in good repair and appearance, which would be subjective, it would be appropriate to take out "good repair and appearance" and add that a sign must be maintained in a condition or state of equivalent quality to what was approved or required by the City. Ms. Carney said that the Law Department did not like that language. She said that the meaning would be interpreted as that it be kept in a like-new condition. Ms. Carney also said that "good" condition would be sufficient.

Motion: Ms. Lemmie moved approval of wording change as suggested by Planning Staff
Second: Mr. Faux
Vote: All ayes (4-0), motion carries.

The **Section #1425-37 Surfacing, Drainage and Grade of Parking.** Ms. Wuerstle pointed out that it was necessary to be specific about what is surfacing and what is maintenance. She said that the section dealing with maintenance of parking areas and maneuvering aisles states that these areas must be paved with asphalt concrete and interlocking masonry pavers this deals with resurfacing, not maintenance. Ms. Wuerstle suggested that a new section be added that would read "these areas must be maintained in good condition, free from broken asphalt, concrete, potholes and weeds and in a state equivalent to that which was approved or required by the City". Ms. Carney noted that the Law Department didn't totally agree on the words equivalent quality. It should allow for limited repair, to allow for some wear or tear.

Motion: Ms. Lemmie moved approval of wording change as suggested by Planning Staff
Second: Mr. Faux
Vote: All ayes (4-0), motion carries.

ADJOURNMENT

With no further business to consider, the meeting was adjourned.

Motion: Mr. Faux motioned adjournment
Second: Ms. Lemmie
Vote: All ayes (4-0), motion carries.

Margaret A. Wuerstle, AICP
Chief Planner
Department of Community
Development & Planning

Donald Mooney, Chair
City Planning Commission

Date: _____

Date: _____